IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ANGELA HILEM, Plaintiff, v. NEXTFAB STUDIO, LLC, Defendant.	CIVIL ACTION NO: 2:16-cv-05922-PD

ANSWER AND AFFIRMATIVE DEFENSES

Defendant NextFab Studio, LLC (**"Defendant"** or **"NextFab"**), by its attorneys Semanoff Ormsby Greenberg & Torchia, LLC hereby answers the Complaint as follows:

I. PRELIMINARY STATEMENT

1. Denied. This paragraph alleges conclusions of law to which no response is required. To the extent there are facts alleged in this paragraph, they are denied.

2. Denied. This paragraph avers conclusions of law to which no response is required.

II. JURISDICTION AND VENUE

3. Denied. This paragraph avers conclusions of law to which no response is required.

4. Denied. This paragraph avers conclusions of law to which no response is required.

5. Denied. This paragraph alleges conclusions of law to which no response is required. To the extent there are facts alleged in this paragraph, they are denied.

6. Denied. This paragraph alleges conclusions of law to which no response is required. To the extent there are facts alleged in this paragraph, they are denied.

III. PARTIES

7. Denied.

8. Admitted.

9. Denied. This paragraph alleges conclusions of law to which no response is required. To the extent there are facts alleged in this paragraph, they are denied.

10. Denied. This paragraph avers conclusions of law to which no response is required.

III.[sic] STATEMENT OF FACTS

11. Admitted in part, denied in part. Plaintiff's hire date was May 12, 2014. It is admitted that Plaintiff was employed by NextFab until February 12, 2015. The remaining allegations of this paragraph aver conclusions of law to which no response is required.

12. Admitted in part, denied in part. Plaintiff's actual position was "Marketing Communications Specialist." She did not maintain an excellent job performance rating.

13. Denied. The description of Plaintiff's duties in this paragraph are copied verbatim from her job description. After hiring, she admitted to not possessing graphic design capabilities.

14. Denied. Plaintiff's description of her background is unrelated to the poor job performance she exhibited at NextFab. Furthermore, her position as "Freelance Contributor to Technically Philly" consisted of a mere two articles.

15. Denied. Plaintiff was, in fact, interviewed by President Evan Malone, Ph.D. and Chief Operating Officer Alan Mathason. She was asked her availability to work after regular business hours (evenings) as referenced in her offer letter and as asked of all NextFab applicants. Plaintiff *volunteered* that her only obligations were "her husband and dogs." She was enthusiastic about the job and gave no signs of being uncomfortable with the question. At no time did Defendant ask about her familial status.

16. Denied. See response to 15 above. NextFab agrees the job presented an excellent opportunity for Plaintiff.

17. Admitted.

18. Denied. Plaintiff's job did not require her, nor was she ever asked, to become the "public face" of NextFab. Similarly, Plaintiff was never asked to work 60-80 hours per week. Rarely was she asked to work more than 40-50 hours per week.

19. Denied. Mr. Tekac left NextFab on June 27, 2014. Plaintiff was not assigned any additional job duties but voluntarily hosted membership events.

20. Denied. Plaintiff's comments about Ms. Novozhilova are misstated. Dr. Malone suggested to Ms. Novozhilova that she speak with a peer, Mr. Boulden, about managing direct reports, as Mr. Boulden had experience doing that and Ms. Novozhilova did not. Ms. Novozhilova later voluntarily resigned. Any implication of gender discrimination is denied.

21. Denied.

22. Denied. In addition to the responses below, NextFab notes that any workplace banter of a sexual nature was not unwelcomed by Plaintiff.

- Plaintiff often cursed at work, as noted by several other employees.
- Plaintiff would often instigate adult and sexual topics and jokes.
- When a co-worker commented that a man was allowed to say something, Plaintiff retorted, "Yeah, he could say that if he wanted to be punched in the dick."
- At a local restaurant Breezies at lunch, Plaintiff took a phone call from her husband who said he booked a vacation with an outside hot tub. Plaintiff responded to her husband, obviously knowing others at the table could hear and were listening, that "I want to fuck you in the hot tub, not outside."

23. Denied. On this occasion Plaintiff was distraught, and Mr. Haggerty placed his hand on her shoulder for a brief moment. He did not stroke Plaintiff's neck and she never pulled away or said "No." There were 12-15 other people in the room when this occurred.

24. Denied. Mr. Haggerty jokingly put an ice cube on Plaintiff's back during a chair massage. Plaintiff chuckled and said, "Brandon, cut it out!" because she thought it was someone else. She then noticed it was Mr. Haggerty. Plaintiff never complained about this incident to anyone at the company

25. Denied.

26. Denied. Mr. Haggerty made a remark about "tag teaming" that, in context, obviously meant two company employees should both work on recruiting a new member. When accompanying a new member to sign up, Mr. Haggerty told the Director of Membership, "Rory

and I had to tag team her but she'll join." There was nothing sexually implied in the comment whatsoever. To the contrary, the phrase "tag teaming" is *not* a common sexual phrase or even double entendre. It is often used to mean two people working towards the same objective.

27. Denied. Mr. Haggerty and Plaintiff had a conversation about the "tag team" comment when the phrase was used again as explanation. Mr. Haggerty did not use the phrase again with other employees or members.

28. Denied. Plaintiff asked to speak with Dr. Malone and Mr. Mathason about the "tag team" comment. After an extended conversation with Mr. Mathason, Plaintiff said she was comfortable working with Mr. Haggerty and that while she was not happy that the situation occurred, she did not see any repercussions and was mostly concerned with the impression the prospective member had on NextFab. Mr. Mathason asked Plaintiff repeatedly if she was satisfied with the resolution of the incident, and she said she was. In addition, Mr. Mathason spoke with Mr. Haggerty and explained that his use of the phrase was poor judgment, was open to misinterpretation, and not to use it again.

29. Denied. The incident as reported was not one of sexual harassment, but instead, a colloquialism that Plaintiff heard as a double entendre. It was suggested she speak with Mr. Haggerty about it. There was no formal investigation because Plaintiff never made a complaint that would lead NextFab to believe she was the victim or potential victim of sexual harassment.

30. Denied. NextFab was not unwilling to investigate any complaint of sexual harassment.

31. Denied. NextFab is unaware of any incidents or complaints concerning Mr. Haggerty and Ms. Zapata.

32. Denied.

33. Denied. Plaintiff mentioned to Mr. Mathason she was meeting with the potential clients only 15 minutes before it was to occur. Dr. Malone then spoke with Plaintiff that the company had multiple previous contacts with the potential client, and he was concerned they would be getting mixed messages. Communicating with this particular potential client was, indeed, outside of Plaintiff's role. NextFab to this day has since engaged in several large transactions with the client – the business was not lost.

34. Denied. See response to 33 above.

35. Denied. See response to 33 above.

36. Denied. Katie O'Loughlin was recommended to NextFab *by Plaintiff*, and was hired as Human Resources Manager in October, 2014. It is denied that Ms. O'Loughlin was ineffective in any way related to Plaintiff.

37. Denied. NextFab denies ignoring or downplaying the situation in any way. Instead, the President of NextFab, Dr. Malone, and Ms. O'Laughlin, met with Ms. DeBiasse and resolved it to her satisfaction. Furthermore, Ms. DeBiasse's personal email address did appear on her public website.

38. Denied. Plaintiff and Ms. DeBiasse met with Ms. O'Laughlin. NextFab denies ignoring or downplaying the situation in any way.

39. Denied.

40. Denied. In response to concerns expressed by Plaintiff and others, a training event was held for all employees and a separate event for women only. The "Women in STEM" presentation was in no way sexist, gender biased or discriminatory.

41. Denied. A meeting took place where Ms. O'Laughlin emphasized that the intent of the session was to provide a safe environment where everyone could discuss concerns and make complaints if necessary. The presentation was in no way sexist, gender biased or discriminatory.

42. Denied. As a result of continued concerns by Plaintiff, the company arranged for a company-wide training event by an outside consultant *recommended by Plaintiff* as well as a female staff only workshop. The workshop was held in December, 2014.

43. Denied. See response to 42 above.

44. Denied. Plaintiff did not attend because she had requested a personal day off prior to the workshop being scheduled. In any event, if Plaintiff did not attend, she has no personal knowledge of the content of the presentation.

45. Denied. NextFab has no record of any complaints by Plaintiff or Ms. DeBiasse during this time.

46. Denied. Plaintiff and others organized a holiday party in December, 2014, which, contrary to Plaintiff's statement, resulted in only one new membership and virtually no sales from attendees following the event.

47. Denied. Plaintiff was placed on a Performance Improvement Plan (**"PIP"**) for reasons unrelated to her prior complaints, if any. Plaintiff was occasionally insubordinate,

sometimes in communications that were visible to other employees. She was resistant to efforts to get her to focus on the core role for which she was hired. Plaintiff also suffered from a poor attitude at work, which other staff members reported as a concern, leaving very few employees to want to interact with her, including the Manager of Member Services. Plaintiff also had difficulties maintaining a professional demeanor. For example, on more than one occasion, she referred to these incidents as "rage crying" while at work. The PIP was not in retaliation, but a communication tool to express the concerns of management and assist Plaintiff in improving and correcting her behavior. Furthermore, when given the PIP, Plaintiff agreed with the suggestions and signed it.

48. Denied. Plaintiff was not treated any differently than any other NextFab employee in need of performance improvement. Dr. Malone asked Plaintiff to keep track of her social media posts so the company could track her progress toward growth goals. Dr. Malone also had several meetings with Plaintiff about her progress.

49. Denied. Plaintiff reported this incident to Human Resources, not that she was otherwise uninvolved. The matter was handled by Mr. Mathason, who discussed the matter with Mr. Kaplan who admitted to asking the woman to discuss professional matters over coffee, but denied any romantic intent.

50. Denied. Plaintiff was terminated as a result of failure to remedy the issues identified in the performance improvement plan mentioned above. Also, she was hired for marketing communications, and specifically social media communications. Over the course of her employment, however, her attention to this role waned and her behavior toward management

and her colleagues became significantly less cooperative. Despite various marketing meetings when aspirational goals and the face of the business were discussed, Plaintiff continued to push a more social party atmosphere that was inconsistent with NextFab's mission. For example, Plaintiff was directed several times to incorporate inspirational stories of members designing and building their products, but she was unwilling to do so. In addition, she refused to learn new software tools relating to formatting photos requested by Dr. Malone saying it was "too time consuming."

51. Denied. Plaintiff's position, Marketing Communications Specialist, was unfilled from the time Plaintiff was terminated until April 2016 when Ms. Marcelle Rice was hired to fill that position. NextFab made an offer to a female to replace Ms. Novozhilova's position (Marketing Manager) since she resigned, but that candidate turned it down. NextFab then made an offer to Mr. Olukotun, a highly qualified and experienced individual, who accepted the position and replaced Ms. Novozhilova as Marketing Manager, not Plaintiff's former position.

COUNT I

(Title VII – Hostile Work Environment, Sexual Harassment, Retaliation)

52. Denied. This paragraph incorporates previous paragraphs by reference and no response is required.

53. Denied. This paragraph alleges conclusions of law to which no response is required. To the extent there are facts alleged in this paragraph, they are denied.

54. Denied. This paragraph alleges conclusions of law to which no response is required. To the extent there are facts alleged in this paragraph, they are denied.

55. Denied. This paragraph alleges conclusions of law to which no response is required. To the extent there are facts alleged in this paragraph, they are denied.

COUNT II
(PHRA, Hostile Work Environment, Sexual Harassment, Retaliation)

56. Denied. This paragraph incorporates previous paragraphs by reference and no response is required.

57. Denied. This paragraph alleges conclusions of law to which no response is required. To the extent there are facts alleged in this paragraph, they are denied.

58. Denied. This paragraph alleges conclusions of law to which no response is required. To the extent there are facts alleged in this paragraph, they are denied.

59. Denied. This paragraph alleges conclusions of law to which no response is required. To the extent there are facts alleged in this paragraph, they are denied.

PRAYER FOR RELIEF

60. Denied. This paragraph incorporates previous paragraphs by reference and no response is required.

WHEREFORE, Defendant NextFab Studio, LLC demands this Court enter judgment in its favor and against Plaintiff and award Defendant attorneys' fees, costs and any other relief it deems just and proper.

AFFIRMATIVE DEFENSES

1. Plaintiff's claims are barred in whole or in part because the Complaint fails to state a claim upon which relief can be granted.

2. Plaintiff's claims are barred in whole or in part because Defendant did not violate Title VII of the Civil Rights Act of 1964.

3. Plaintiff's claims are barred in whole or in part because Defendant did not violate the Pennsylvania Human Relations Act.

4. Plaintiff's claims are barred in whole or in part because Plaintiff committed violations of Defendant's policies and procedures that support the decision to terminate her employment.

5. Plaintiff's claims are barred in whole or in part because Defendant at all times had policies and procedures in place to proactively avoid discrimination and retaliation of all kinds, including written policies of which Plaintiff was aware.

6. Plaintiff's claims are barred in whole or in part because Plaintiff unreasonably failed to take advantage of Defendant's policies and procedures regarding reporting complaints of discrimination, harassment or retaliation.

7. Plaintiff's claims are barred in whole or in part because Defendant at all times undertook steps to prevent and correct promptly any acts of discrimination, harassment and retaliation.

8. Plaintiff's claims are barred in whole or in part because any communication or act directed towards Plaintiff that she alleges constitutes harassment was not unwelcomed by Plaintiff.

9. Plaintiff's claims are barred in whole or in part because any incidents of harassment were not severe or pervasive.

10. Plaintiff's claims are barred in whole or in part because Defendant did not act or fail to act in any way that would support an award of punitive damages.

11. Plaintiff's claims are barred in whole or in part because Plaintiff is not entitled to the recovery of attorneys' fees or costs.

12. Plaintiff's claims are barred in whole or in part because Plaintiff cannot establish a prima facie case of discrimination, harassment or retaliation.

13. Plaintiff's claims are barred in whole or in part because the wrongdoing of which Plaintiff complains, if it occurred at all, was conducted by third parties, unrelated to Defendant.

14. Plaintiff's claims are barred in whole or in part because Defendant took no action against Plaintiff without regard to Plaintiff's gender.

15. Plaintiff's claims are barred in whole or in part because Plaintiff has suffered no damages.

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SEMANOFF ORMSBY
GREENBERG & TORCHIA, LLC

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Attorneys for the Defendant
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CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below service of a true and correct copy of the foregoing Answer and Affirmative Defenses to the Complaint was made via ECF notification upon the following:

Sidney L. Gold, Esq.
Traci M. Greenberg, Esq.
Sidney L. Gold & Assoc. P.C.
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Philadelphia, PA 19103

/s/ Michael J. Torchia MJT2105
MICHAEL J. TORCHIA, ESQUIRE

Date: February 1, 2017

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